



CASE STUDY

HUMAN RIGHTS AT SEA

THE NEW ZEALAND FISHERIES (FOREIGN CHARTER VESSELS AND OTHER MATTERS) AMENDMENT ACT

“Once vessels are flagged to New Zealand the full range of New Zealand law including employment relations and workplace health and safety law will automatically apply and be enforceable.”

Hon NATHAN GUY (Minister for Primary Industries)

14 February 2013

Introduction

Over the last decade, the New Zealand fishing industry has been shaken by a series of high profile allegations of the abuse and exploitation of foreign crews working on foreign fishing vessels within New Zealand’s waters.

Specifically, high level reports have highlighted issues of sexual and physical abuse, minimal pay, and debt slavery. Following a series of non-legislative measures, the Government of New Zealand has responded with the **Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act**, which came into force on 1 May 2016¹.

¹ Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act (2012), <http://www.legislation.govt.nz/act/public/2014/0060/latest/DLM4794406.html>

This Act requires any foreign fishing vessel operating in New Zealand waters to reflag as a New Zealand ship, removing their right to fish in New Zealand waters until they do so.

According to the Government, this measure is intended to help identify issues of forced labour earlier, and to ensure New Zealand employment law is applied uniformly at sea².

What is certain is that dramatic action was and is still needed.

In the first reading of the Act, the Government acknowledged that forced labour in the fishing industry has resisted successive Government measures for at least the last two decades³. Indeed, numerous independent organisations have produced data suggesting abuse has become endemic.

An analysis by Bloomberg estimates that approximately 40% of squid exported from New Zealand has been caught on a vessel using forced labour, as well as 15% of Hoki exports, and 8% of Southern Blue Whiting⁴. The issue was also highlighted dramatically by the US State Department's 2012 Annual Report on Human Trafficking, which identified New Zealand fishing as a destination industry for regional forced labour⁵.

Alongside the data, a number of high profile incidents have helped to push the issue of slavery at sea into the news.

The Melilla 203

In 2012, the major US magazine Bloomberg Businessweek ran an expose of the New Zealand Fishing industry, entitled "The Fishing Industry's Cruellest Catch⁶," which summarised Benjamin Skinner's "Fishing as Slaves on the High Seas". This piece follows Yusril (not his real name) on his journey from an agency in Indonesia to working as a slave on the Melilla 203, a South Korea flagged ship that trawls in the waters surrounding New Zealand.

Yusril, whose story is corroborated by several of his shipmates, endured eight months aboard the Melilla, during which time the Indonesian crew were subject to repeated physical and sexual abuse by the ship's operators.

The contract he had signed to get the work included a \$3,500 penalty, if he were to leave the ship, a sum that was more than his net worth, and was secured against the title to his land.

² New Zealand Parliament, (2013) 'Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill — First Reading', (2013). http://www.parliament.nz/en-nz/pb/debates/debates/50HansD_20130214_00000024/fisheries-foreign-charter-vessels-and-other-matters-amendment

³ Ibid.

⁴ Skinner, E. Benjamin, (2012) 'The Fishing Industry's Cruellest Catch', Bloomberg.com -. <http://www.bloomberg.com/news/articles/2012-02-23/the-fishing-industrys-cruellest-catch>

⁵ US Department of State, Country Narratives: New Zealand (2012) <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm>

⁶ Skinner 2012.

Unable to leave, the crew worked up to thirty (30) hour shifts, causing dozens of injuries to crew-members, some of which were crippling. When deductions, agency fees, and a manipulated exchange rate were taken into account, the fisherman averaged only around \$1 per hour, far less than the \$12 required by New Zealand law.

After eight months all but four of the crew of the Melilla left the ship, while it was docked in New Zealand, in protest at their treatment. Aided by lawyers, *pro bono*, they demanded their unpaid wages and condemned the months of human rights abuses they had suffered.

Finally, according to Skinner, most were coerced into signing documents that waived their claims in return for payments between \$500 and \$1000 - far less than the \$260 a month plus bonuses they had been promised.

Dong won Fisheries

The scale of the endemic exploitation of foreign workers is well illustrated by litigation currently pending against industry giant Dong Won Fisheries.

Over 200 Indonesian fishermen who worked off New Zealand are currently suing their former employers for almost \$14 million in unpaid wages⁷. The sailors allege that they received less than \$600 a month, despite working an average of 12 hours a day, and 20 hour shifts during peak season. While operating on only four hours sleep the workers were often physically and verbally abused by their supervisors.

Dong Won Fisheries is by no means an isolated case. The following chronology of events gives an indication of the breadth of the current problem.

⁷ Young-jin, K. (2014) 'Indonesian Sailors Seek \$14 Million in Unpaid Wages', Korea Times http://www.koreatimes.co.kr/www/news/nation/2016/05/116_162229.html

Chronology of key events and examples of reported cases of abuse

Date	Event
2001	Morris publishes a study identifying the New Zealand Fishing Industry as 'home to some of the worst examples of abuse in the workplace'. The report goes on to highlight 'fraudulent documentation, exploitation, intimidation, coercion, inhumane working conditions, sexual assault, and even murder' ⁸ .
2004	An investigation by the New Zealand Department of Labour is triggered by 150 foreign crew abandoning their vessels when they docked. The subsequent report confirmed appalling exploitation of foreign workers, and lead to the introduction of a non-binding code of practice in 2006 ⁹ .
2005	Six Indonesian fishermen seek refuge from the Korean vessel <i>Melilla 203</i> citing mistreatment
	Ten Indonesian Fishermen flee the Korean Vessel <i>Sky 75</i> claiming physical and mental abuse
	The entire crew of the <i>Melilla 201</i> jump ship, helping to reveal a ' <i>history of death, injury and pollution on that ship and its sister ship, the Melilla 203</i> ' ¹⁰
2006	Nine Indonesian fishermen flee the Korean vessel <i>Marinui</i> claiming physical and mental abuse
2009	15 Indonesian fishermen flee the Korean vessels <i>Shin Ji</i> and the <i>Melilla 201</i> claiming physical and verbal abuse, the non-payment of wages, and long shifts

⁸ Morris, P. (2001). Inquiry into Ship Safety: Ships, Slaves and Competition. International Commission on Shipping (ICONS), Charleston, NSW.

⁹ New Zealand Parliament, (2013) 'Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill — First Reading', (2013), http://www.parliament.nz/enz/pb/debates/debates/50HansD_20130214_00000024/fisheries-foreign-charter-vessels-and-other-matters-amendment

¹⁰ Stringer, C. Simmons, G. and Coulston, D. (2011) Stringer, C. Simmons, G. and Coulston, D. (2011) 'Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels', <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf>.

2010	The 38-year-old Korean fishing boat <i>Oyang 70</i> sank in calm conditions off the coast of Otago. Six men died, when the captain refused to cut loose an enormous 120-tonne catch, causing the ship to roll and sink as the haul was brought in. The subsequent inquiry interviews the survivors and families of the victims, and uncovers systematic abuse and exploitation within the industry ¹¹ .
2011	Seven Indonesian Crew walk off the Korean <i>Shin Ji</i> in Auckland citing verbal, psychological, contract abuse, and inhumane punishments ¹² .
	All 32 Indonesian crew on the Korean flagged <i>Oyang 75</i> walk off the ship alleging sexual and physical abuse. The ship would later face 26 charges of dumping fish ¹³ .
	A string of incidents and allegations involving Korean vessels prompted the Korean Government to send an inter-departmental delegation to New Zealand to investigate concerns with Korean-owned fishing ships. ¹⁴
	Christina Stringer, Daren Coulston, and Glenn Simmons, publish their paper 'Not in New Zealand's water's surely?' The document provides evidence of numerous cases of abuse and coercion among the fishermen on New Zealand's 27 foreign charter vessels. The report prompted the government to launch a joint ministerial inquiry ¹⁵ .
2012	A New Zealand joint ministerial inquiry in concludes that Korean fishing charters were damaging New Zealand's international reputation, and sets out a series of legislative and non-legislative proposals ¹⁶ . This report later provides the basis for the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act .

¹¹ Kirk, S. (2016) 'Crackdown on Slave Fishing Crews', Stuff.co.nz, <http://www.stuff.co.nz/business/industries/79487729/crackdown-on-slave-fishing-crews-foreign-charter-vessels-must-reflag-to-new-zealand>.

¹² Stringer, C. Simmons, G. and Coulston, D. (2011)

¹³ Skinner, (2012)

¹⁴ Kirk, S, (2016)

¹⁵ Stringer, C. Simmons, G. and Coulston, D, (2011)

¹⁶ Kird, S, (2016)

	<p>The US State Department criticised New Zealand for being a destination country for regional forced labour in its 2012 Annual Report on Human Trafficking¹⁷.</p>
	<p>The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act is voted into law. The Act requires changes ‘to protect the human rights of crews, and ensure that New Zealand’s reputation as a responsible and sustainable fishing nation is maintained’. From 2016, all Foreign Charter Vessels are required to carry the New Zealand flag and operate under full New Zealand Jurisdiction. Foreign Charter Vessels are given a 4-year period to make the transition.</p>

¹⁷ US Department of State, (2012).

Impact of the legislation

While the legislation has formed an important part of the government's response, it must be viewed in conjunction with the non-legislative measures that have also been put in place. By far the most important of these measures are:

- Compulsory individual New Zealand bank accounts for crew-members;
- Observers stationed on all foreign-owned fishing vessels;

Independent audits of charter parties to ensure crew visa requirements, including wages, are being respected¹⁸.

It is reported that nine vessels have been re-flagged, three were in the process of reflagging and cannot fish in New Zealand waters until they have done so. The Government has issued a statement explain that nine further vessels have decided not to continue fishing in New Zealand waters. The nine that had reflagged are from Japan, Korea, Ukraine and the Commonwealth of Dominica¹⁹.

Reacting to this news, the Government maintained that reflagging was the only measure that went far enough to guarantee protection. The Minister for Primary Industry remained adamant on this point, recently re-emphasising that the Government believes "Reflagging will place foreign charter vessels under the responsibility and control of New Zealand. It will hold domestic operators accountable for the employment of crew, ensuring that New Zealand's criminal law applies in full, and will resolve possible trade issues and reputational concerns." Finally, the Minister concluded that: "once vessels are flagged to New Zealand the full range of New Zealand law including employment relations and workplace health and safety law will automatically apply and be enforceable"²⁰.

Despite these benefits, the move was not without risk. Foreign chartered vessels make up about \$302 million of New Zealand's annual \$1.53 billion seafood exports, and the government has previously acknowledged that the shift will have "uncertain economic impacts" such as losing access to vessels with a lower value attached to the annual catch entitlement, and increased operating costs causing smaller domestic companies to become unprofitable²¹.

¹⁸ Guy, N. (2016) Scoop News, Business Desk, 'Foreign Charter Vessels Reflagged to New Zealand from Today' <http://www.scoop.co.nz/stories/PA1605/S00006/foreign-charter-vessels-reflagged-to-new-zealand-from-today.htm>.

¹⁹ New Zealand Parliament, (2013) 'Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill — First Reading', (2013), http://www.parliament.nz/en-nz/pb/debates/debates/50HansD_20130214_00000024/fisheries-foreign-charter-vessels-and-other-matters-amendment.

²⁰ Ibid.

²¹ Ibid.

In addition, several major New Zealand fisheries came out in fierce opposition to the Act, despite supporting the principal of ensuring New Zealand jurisdiction applied uniformly to all of the ships in the area. Indeed, this initial opposition was so stringent that the New Zealand Parliament's Primary Production Select Committee quickly proposed giving the Minister for Primary Industries the power to grant exemptions to reflagging²².

As the economic impact of the Act begins to be felt this year, the resolve of the New Zealand legislators and enforcement mechanisms will be tested.

Bibliography

Billot, V. (2012) 'Blood And Salty Water, The NZ Fishing Industry's Failed Experiment With Globalisation' <http://www.converge.org.nz/watchdog/30/10.html>

Field, M. (2016) 'Whistleblower in Hiding after "Slavery" Storm', Stuff.co.nz <http://www.stuff.co.nz/business/industries/6481035/Whistleblower-in-hiding-after-slavery-storm>

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act (2012) <http://www.legislation.govt.nz/act/public/2014/0060/latest/DLM4794406.html>

Guy, N. (2016) Scoop News, Business Desk, 'Foreign Charter Vessels Reflagged to New Zealand from Today' <http://www.scoop.co.nz/stories/PA1605/S00006/foreign-charter-vessels-reflagged-to-new-zealand-from-today.htm>

Kirk, S. (2016) 'Crackdown on Slave Fishing Crews', Stuff.co.nz <http://www.stuff.co.nz/business/industries/79487729/crackdown-on-slave-fishing-crews-foreign-charter-vessels-must-reflag-to-new-zealand>

Kiwiblog, (2016) 'Foreign Flagged Fishing Ships Now Banned' <http://www.kiwiblog.co.nz/tag/slavery>

McBeth, P. (2012) 'MPI Backs Plan to Force Foreign Fishing Boats to Fly NZ Flag', Scoop Business <http://www.scoop.co.nz/stories/BU1209/S00911/mpi-backs-plan-to-force-foreign-fishing-boats-to-fly-nz-flag.htm>

McBeth, P. (2013) 'NZ Select Committee Recommends Loophole for Reflagging Fishing Vessels', The National Business Review <http://www.nbr.co.nz/article/nz-select-committee-recommends-loophole-reflagging-fishing-vessels-bd-143381>

New Zealand Parliament, (2013) 'Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill — First Reading', (2013) <http://www.parliament.nz/en->

²² McBeth, P. (2013) 'NZ Select Committee Recommends Loophole for Reflagging Fishing Vessels', The National Business Review , <http://www.nbr.co.nz/article/nz-select-committee-recommends-loophole-reflagging-fishing-vessels-bd-143381> .

[nz/pb/debates/debates/50HansD_20130214_00000024/fisheries-foreign-charter-vessels-and-other-matters-amendment](http://www.parliament.nz/debates/debates/50HansD_20130214_00000024/fisheries-foreign-charter-vessels-and-other-matters-amendment)

New Zealand Parliament (2012) 'Opinion of R.B. Squire QC on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A326708/59d790273aedfd33b1c2e73ef6f2ad6a952a8a39

New Zealand Parliament (2012) 'Opinion of the Government of Japan on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A326830/1b81acc5f5c3c15ad9333e944405567f6802bdbd

New Zealand Parliament. (2012) Questions for oral answer, 'Foreign Charter Fishing Vessels—Requirement to Reflag Vessels' http://www.parliament.nz/en-nz/pb/business/qa/50HansQ_20120522_00000007/7-foreign-charter-fishing-vessels%e2%80%94requirement-to-reflag

New Zealand Parliament (2012) 'Robert Glennie - Submission on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A324588/f23e7b22280ce7934fac08ce9eaf1fd31ca5260e

New Zealand Parliament (2012) 'Seafood New Zealand Supplementary Submission on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A326876/fb8d29a5a57e4fc427423e4aa26179244e1703cf

New Zealand Parliament (2012) 'Submission by Aurora Fisheries Limited on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A326837/ac8783ac9180d7745b44b2721b5d1fa9d98dc0ce

New Zealand Parliament (2012) 'Submission by Gisborne Fisheries Limited on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A326540/d023899e805423a329a2172d46d77c644b67aa8c

New Zealand Parliament (2012) 'Submission by Sanford Limited on the Fisheries (Foreign Chartered Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A327064/e25dae73854493f5082d13aa165c276f279721d9

New Zealand Parliament (2012) 'The Salvation Army (New Zealand, Fiji and Tonga Territory) Submission on the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill' http://www.parliament.nz/resource/en-nz/50SCPP_EVI_00DBHOH_BILL11820_1_A326679/2d2187d242c8cc718cdb60bf64ca15428aefc55113.

Radio New Zealand. (2012) 'Foreign Vessels to Be Reflagged as NZ Boats' <http://www.radionz.co.nz/news/national/106435/foreign-vessels-to-be-reflagged-as-nz-boats>

Scoop News, Business Desk, 'Foreign Charter Vessels Reflagged to New Zealand from Today' <http://www.scoop.co.nz/stories/PA1605/S00006/foreign-charter-vessels-reflagged-to-new-zealand-from-today.htm>

Skinner, E. Benjamin, (2012) 'The Fishing Industry's Cruellest Catch', Bloomberg.com <http://www.bloomberg.com/news/articles/2012-02-23/the-fishing-industrys-cruellest-catch>

Stringer, C. Simmons, G. and Coulston, D. (2011) 'Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels' <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf>

US Department of State, Country Narratives: New Zealand (2012) <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm>

Young-jin, K. (2014) 'Indonesian Sailors Seek \$14 Million in Unpaid Wages', Korea Times http://www.koreatimes.co.kr/www/news/nation/2016/05/116_162229.html

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Human Rights at Sea

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment especially where they are currently absent, ignored or being abused.

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